



Cleaners and couriers latest black economy target

The detail of the Government's crackdown on cleaning and courier companies was revealed late last month. From 1 July 2018, the taxable payments reporting system will extend beyond the building industry to cleaning and courier businesses. This means that these businesses will need to report payments they make to contractors (individual and total for the year) to the ATO. By 'payment' the ATO means any form of consideration including non-cash benefits and constructive payments. The building industry has had this form of "enhanced reporting" since 2012-13. The result was an additional \$2.3 billion in income tax and GST liabilities collected through voluntary reporting in the first year alone.

What is a cleaning and courier service?

The terms 'cleaning service' and 'courier service' take their ordinary meaning. Courier services include activities where items or goods are collected from, and/or delivered to, any place in Australia using a variety of methods including by truck, car, station wagon, van, ute, motorcycle, motorised scooter, bicycle or other non-powered means of transport, or on foot.

Freight services, blood and blood product couriers, and passenger transport are not affected. A cleaning service is any service where a structure, vehicle, place, surface, machinery or equipment has been subject to a process in which dirt or similar material has been removed from it. This includes office cleaning, road sweeping or street cleaning, swimming pool cleaning, park and facilities cleaning, or cleaning for certain types of cultural or sporting events. Mixed business that supply services including courier or cleaning services will also be affected.

What you need to do

The first annual report for affected cleaning and courier companies is due by 29 August 2019 for the 2018-19 year. The types of information reported to the ATO about contractors include:

- ABN (where known)
- Name
- Address
- Total paid to the contractor (including GST) for the financial year, and
- Total GST included in the gross amount that was paid.

If an invoice you receive from a contractor includes both labour and materials, whether itemised or combined, you will need to report the total amount of the payment. If your business is likely to be affected by the new requirements and you currently do not have systems in place that allow you to readily access the information required by the ATO, it's important to start your planning now.

New legislation restricts access to the reduced company tax rate

Legislation restricting access to the small business company tax rate reduction entered Parliament last month. The changes specifically preclude companies with passive investments such as rental property income from qualifying for the small business entity tax rate of 27.5%.

For the 2017 income year a company could access the reduced company tax rate if it was carrying on a business and it had an aggregated turnover of less than \$10 million. The changes replace the 'carrying on a business test' with a 'passive income test' from the 2018 income year onwards. Under the new rules, to access the reduced company tax rate, 80% or less of the entity's assessable income must be passive in nature.

The passive income test is not simple. Where a company is receiving income from trusts or partnerships, you need to trace through to determine the nature of the income that was derived by that trust or partnership, and this might need to be done on multiple levels. For example, Trust 1 might distribute income to Trust 2, which then distributes income to a company. Whether dividends are treated as passive income will depend on the shareholding percentage involved.

These changes mean that companies that only hold rental properties will not qualify for the lower tax rate, even if the rental activities amount to a business under general principles. However, a company that receives distributions from a related trust could still qualify for the lower rate if 20% or more of its income is attributable to trading profits (directly or indirectly through the trust).

Under the proposed new rules, it will no longer be necessary to determine whether the company carries on a business in its own right under ordinary principles to determine its tax rate.

YOUR KNOWLEDGE



The removal of the 'carrying on a business test' should eliminate some of the uncertainty that is currently faced when trying to determine the tax rate that applies to many private companies. However, this would still be relevant in determining whether a company can access other concessions that are available to small business entities.

Changes will also be made to the maximum franking percentage rules. In determining a company's maximum franking rate for a particular income year, you need to look at the tax rate that would apply in the current year if the following assumptions are made:

- The company's aggregated turnover in the current year is the same as in the previous year;
- The company's assessable income in the current year is the same as in the previous year; and
- The company's passive income in the current year is the same as in the previous year.

There have been a lot of changes to the company tax rules and who and what they apply to. This development should finally provide some much needed certainty around which companies can qualify for the lower corporate tax rate and the flow-on impact that this has on franking rates for dividends paid by companies.

ASIC penalties 'the cost of doing business'

The Australian Securities and Investment Commission (ASIC) is set to increase penalties for corporate and financial sector misconduct to deter the fines being seen as the cost of doing business. The impact of the proposed changes would be to expand the range of civil penalty provisions and to increase maximum civil penalty amounts in the *Corporations Act 2001* and *National Consumer Credit Protection Act 2009* (Credit Act) to:

- for individuals, 2,500 penalty units (\$525,000); and
- for corporations, the greater of: 12,500 penalty units (\$2.625 million), or three times the benefit gained (or loss avoided) or 10% annual turnover.

This would mean increases from \$200,000 (individuals) and \$1 million (corporations) in the Corporations Act and 2,000 penalty units (\$420,000) for individuals and 10,000 penalty units (\$2.1 million) for corporations in the Credit Act.

ASIC is also seeking to expand its powers to enable it to remove benefits illegally obtained or losses avoided. Maximum terms of imprisonment would also be increased for a range of offences to the highest maximum penalty available; 10 years imprisonment and substantial fines.

Quote of the month

"It is better to fail in originality than to succeed in imitation."

Herman Melville